FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	:	**LON/00BF/LSC/2024/0001**
Property	:	**Albion Court, Albion Road, Sutton, Surrey SM2 5TB**
Applicant	:	**Mark Atherton and others (listed A/83 in 2023/0406)**
Representative	:	**Amanda Gourlay, counsel**
Respondent	:	**MB Freeholds Limited**
Representative	:	**Marcello Amodeo, Residential Management Group**
Type of application	:	**Appointment of a manager**
Tribunal members	:	**Judge Hargreaves** **Kevin Ridgeway MRICS**
Date and venue of hearing	:	**Alfred Place, 25th July 2024**
Date of decision	:	**26th July 2024**

DECISION

Decisions of the Tribunal

1. The Respondent's application for a stay of proceedings is refused.

2. On condition that he produces a copy of his professional indemnity insurance policy to the Tribunal and Landlord which complies with and fulfils the requirements of paragraph 43 of the attached order by 2pm Tuesday 30th July 2024, Andrew Martin is appointed as Manager of the Property in accordance with the attached order.

3. For the avoidance of doubt, an order is made in favour of the Applicants under *s20C Landlord and Tenant Act 1985* that none of the costs incurred by the Respondent in these proceedings can be added to the service charge.

4. In addition, for the avoidance of doubt, an order is made under *paragraph 5A Commonhold and Leasehold Reform Act 2002* that none of the costs incurred by the Respondent in connection with these proceedings can be charged to the Applicants as an administration charge under their respective leases.

REASONS

1. The application and supporting documents are to be found in the bundle dealing with the dispute concerning service charges which was heard on 10th June, decision dated 2nd July, LON/00BF/LSC/2023/0406. The application for the appointment of a manager was made on 10th January, see the application and supporting documents at A/74-178. The Respondent indicated in response that it did not intend to oppose the application. There was insufficient time to deal with this application on 10th June and so the application was re-listed on 10th June for 25th July.

2. The Respondent issued an extremely late application for a stay of proceedings on Monday 22nd July just before 4pm. It was opposed by the Applicant. The main ground of the application was that the Respondent 'may' be appealing the decision dated 2nd July. Time for making any application for permission to appeal expires on Tuesday 30th July, less than a week away. We would have expected any application made on these grounds to be supported by a completed application for permission to appeal or a draft application or at least evidence that instructions had been given by the Respondent to prepare such an application. No such evidence was provided. 'May' is not sufficient. Even if an application for permission to appeal had been issued (which we might have been able to deal with on 25th), we consider it would be irrelevant to this application.

3. Furthermore, the Respondent did not seek permission to appeal the two previous decisions to which we referred in detail in the decision of 2nd July, and which contain similar points. The idea of using a vague suggestion of a possible application for permission to appeal the third decision in a series

as a means of derailing or delaying this application, is misconceived and we reject it.

4. Furthermore, the application for the appointment of a manager was made and not opposed before the hearing and decision of 2nd July, and the overall facts of the two cases suggest that the driving imperative is to get on with the appointment of a manager. We can see no conceivable basis for delaying the application – or any appointment – until after any appeal is heard or permission to appeal refused. The appointment of a manager is not dependent on the outcome of a successful appeal or its rejection. There are numerous grounds outlined in the application under the s22 LTA 1987 notice on which the tribunal has jurisdiction without having to rely on the outcome of the July decision to justify the appointment. Quite apart from the intricacies of the Respondent's approach to service charges, it had instructed its managing agents to withdraw services it was supposed to provide under the terms of the Leases, and there is a need to reinstate those. Mr Martin also drew attention to certain safety issues which have been neglected.

5. To emphasise the need to proceed, the Respondent did not seek to argue that any of the 27 points particularised by the Applicant in the s22 notice, were inapplicable or wrong. To summarise, those grounds are made out and in any event, we are satisfied on the basis of the Applicant's evidence, that it is just and convenient to make the attached order.

6. That is subject to the production of the insurance certificate as outlined above, which we consider should preferably have been produced at the hearing. While we have no reason to doubt Mr Martin's assurance that he has a suitable policy, we consider we are entitled to make this order conditional on seeing it. Any difficulties in complying with the order can be remedied by an application for further time and a variation of the start date of the appointment if required.

7. The order appointing Mr Martin has been made after we heard his oral evidence and careful answers to our questions. Although he has no experience of a tribunal appointment, we were impressed by his responses to the questions we raised about (i) his company and employees (ii) his experience overall in similar management (including another block in London with similarly difficult lease provisions) and most critically in this case (iii) his approach to dealing with the particular service charge provisions in this lease. He attended the hearing on 10th June and can be under no illusions about the task he faces. We were particularly impressed with his approach to quarterly accounting and dividing the usual service charge year in this case into two to make it workable and manageable. We conclude he has a good grasp of the lease provisions and were also impressed with the conclusions he reached, after a visit, about the safety of the premises and the need to replace the walkway guard rails sooner rather than later. His answers dealt with both the money side of management and the practical.

8. In addition, we are satisfied with his professional accreditations which were not set out in his proposal (Associate RICS membership, MIRPM, and the company is affiliated to ARMA and runs its practice in compliance with those standards). We are confident that Mr Martin is familiar with RICS practices and handbook requirements and runs service charge accounts for clients in a responsible manner, with separate client accounts at Metrobank for each. None of his evidence or proposed scheme were challenged by the Respondent.

9. The attached order as made reflects a robust discussion and the parties' submissions taking into account Mr Almodeo's particular drafting objections and points of dispute about the original draft. In particular the Manager is to collect the ground rents because at £26pa the costs of separate collection is disproportionate and we are satisfied he will account to the Landlord. (There was a conflict in the draft order which was not spotted at the hearing and the parties should satisfy themselves that the relevant ground rent provisions all now reflect this point.)

10. Paragraph 15 now reflects a mutual redraft by the parties.

11. The main dispute was over the inclusion of paragraph 36, sub-paragraph (a) in particular. Mr Almodeo submitted that these provisions should only apply once an appeal has been dealt with, but in our judgment this was another way of trying to obtain a stay of proceedings through the back door, would hamper Mr Martin's progress with the financial and practical management of the property, and in effect make a nonsense of his appointment. Mr Martin gave his response orally on the implications of any delays in his appointment and we agree with his position. It was rather hard to understand the Respondent's position now to seek to delay the implementation of an order it did not oppose months ago, particularly in the light of the litigation history between the parties.

Judge Hargreaves, Kevin Ridgeway MRICS

26th July 2024